



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R09-OAR-2022-0501; FRL-10106-02-R9]

Determination of Attainment by the Attainment Date But For International Emissions for the 2015 Ozone National Ambient Air Quality Standard; Imperial County, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final action.

SUMMARY: The Environmental Protection Agency (EPA or “Agency”) is determining that the Imperial County nonattainment area would have attained the 2015 ozone national ambient air quality standard (NAAQS) by the August 3, 2021 “Marginal” area attainment date, but for emissions emanating from outside the United States. As a result of this final action, the Imperial County nonattainment area will no longer be subject to the Clean Air Act (CAA) requirements pertaining to reclassification upon failure to attain and therefore will remain classified as a Marginal nonattainment area for the 2015 ozone NAAQS. This action discharges the EPA’s statutory obligation to determine whether the Imperial County ozone nonattainment area attained the NAAQS by the attainment date.

DATES: This final action is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2022-0501. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available

through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Ginger Vagenas, Air Planning Office (AIR-2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972-3964, or by email at vagenas.ginger@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us,” and “our” refer to the EPA.

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I. Summary of the Proposed Action

On August 15, 2022, the EPA proposed to determine, based on a demonstration submitted by the State of California, that the Imperial County nonattainment area¹ would have attained the 2015 ozone NAAQS² by the “Marginal” area attainment date of August 3, 2021, but for emissions emanating from outside of the United States (specifically, from Mexico), and therefore is not subject to the CAA requirements pertaining to reclassification upon failure to attain.³ This demonstration, entitled “Imperial County Clean Air Act Section 179B(b) Analysis for the 70 ppb 8-Hour Ozone Standard,” was submitted by the California Air Resources Board (CARB) on August 16, 2021. CARB submitted additional information on November 24, 2021.

¹ The Imperial County nonattainment area for the 2015 ozone standard includes the entire county. Both the Quechan Tribe of the Fort Yuma Indian Reservation and the Torres Martinez Desert Cahuilla Indians have lands within Imperial County. A precise description of the Imperial County ozone nonattainment area is contained in 40 CFR 81.305.

² Ground-level ozone pollution is formed from the reaction of volatile organic compounds (VOC) and oxides of nitrogen (NO_x) in the presence of sunlight. On October 26, 2015, the EPA revised the NAAQS for ozone to establish a new 8-hour ozone standard. 80 FR 65452. In that action, the EPA promulgated identical revised primary and secondary ozone standards designed to protect public health and welfare that specified an 8-hour ozone level of 0.070 parts per million (ppm). Because the 2015 primary and secondary NAAQS for ozone are identical, for convenience, the EPA refers to them in the singular as “the 2015 ozone NAAQS” or as “the standard.”

³ 87 FR 50030.

Using several lines of evidence, CARB evaluated whether, and the extent to which, ambient ozone levels in Imperial County are affected by emissions emanating from northern Mexico.

In our proposed rule, we provided background information on the ozone standard, area designations and related SIP requirements for Marginal ozone nonattainment areas under the CAA, and information on the provisions of CAA section 179B, entitled “International Border Areas.” We also provided our analysis of CARB’s demonstration and the rationale for our conclusion that Imperial County would have attained the 2015 ozone NAAQS, but for emissions emanating from Mexico. We stated that, if our proposed determination were to be finalized, the EPA’s obligation under CAA section 181(b)(2)(A) to determine whether the area attained by its attainment date would not apply and the area would not be reclassified. The area would remain designated nonattainment and thus the State would continue to comply with applicable requirements for a Marginal ozone nonattainment area.

Please see our proposed rule for more information concerning the background for this action and for a more detailed discussion of the rationale for our determination that Imperial County would have attained the 2015 ozone NAAQS by the Marginal area attainment date of August 3, 2021, but for emissions emanating from Mexico.

II. Public Comment

The public comment period on the proposed rule opened on August 15, 2022, the date of its publication in the *Federal Register*, and closed on September 14, 2022. We did not receive any public comments.

III. Final Action

For the reasons discussed in detail in the proposed rule and summarized herein, the EPA is taking final action under CAA section 179B(b) to determine, consistent with our evaluation of the “Imperial County Clean Air Act Section 179B(b) Analysis for the 70 ppb 8-Hour Ozone Standard,” that the Imperial County nonattainment area would have attained the 2015 ozone NAAQS by the Marginal area attainment date of August 3, 2021, but for emissions emanating

from Mexico. Therefore, the EPA's obligation under section 181(b)(2)(A) to determine whether the area attained by its attainment date no longer applies. The area will not be reclassified and will remain a Marginal nonattainment area.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563:

Improving Regulation and Regulatory Review

This action is exempt from review by the Office of Management and Budget because it responds to the CAA requirement to determine whether areas designated nonattainment for an ozone NAAQS attained the standard by the applicable attainment date.

B. Paperwork Reduction Act (PRA)

This rulemaking does not impose any new information collection burden under the PRA not already approved by the Office of Management and Budget. This action does not contain any information collection activities and serves only to make final a determination that the Imperial County Marginal nonattainment area would have attained the 2015 ozone standard by the August 3, 2021 attainment date but for international emissions.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. The determination that the Imperial County Marginal nonattainment area would have attained the 2015 ozone standard by the August 3, 2021 attainment date but for international emissions does not in and of itself create any new requirements beyond what is mandated by the CAA. Instead, this rulemaking only makes a factual determination, and does not directly regulate any entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538 and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government. The division of responsibility between the Federal Government and the states for purposes of implementing the NAAQS is established under the CAA.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action has tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law.

The EPA has identified two tribal areas located within the Imperial County nonattainment area, which is the subject of this action determining the area would have attained the 2015 ozone NAAQS, but for emissions emanating from outside the United States. The EPA invited the Quechan Tribe of the Fort Yuma Indian Reservation and the Torres Martinez Desert Cahuilla Indians to engage in government-to-government consultation in advance of our proposed action and communicated with the tribes after the Agency issued the proposed rule. The EPA did not receive any requests to consult on this action.

G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 as applying to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive order. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. The EPA's evaluation of this issue is contained in the section of the preamble to the proposed rule titled "Environmental Justice Considerations."

K. Congressional Review Act (CRA)

This rulemaking is exempt from the CRA because it is a rulemaking of particular applicability. The rulemaking makes factual determinations for specific entities and does not directly regulate any entities. The determination of attainment does not in itself create any new requirements beyond what is mandated by the CAA.

L. Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the *Federal Register*]**. Filing a petition for reconsideration by the Administrator of this final action does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Designations and classifications, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Administrative practice and procedure, Air pollution control, Designations and classifications, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 6, 2022.

Martha Guzman Aceves,
Regional Administrator,
Region IX.

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